



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

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1-800-592-5482

MINUTES STATE WATER CONTROL BOARD

June 27, 2007
House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Board Members Present:

W. Shelton Miles, III, Chair
R. Michael McKenney
W. Jack Kiser
Robert H. Wayland, III

Komal K. Jain Vice-Chair
Thomas D. C. Walker
John B. Thompson

Staff Present:

David K. Paylor, Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office:

Alfred B. Albiston, Assistant Attorney General

- 1) The attached minutes summarize activities that took place at this Board Meeting.
- 2) The meeting was convened at 9:35 a.m. on June 27, 2007, recessed at 12:15 p.m., reconvened at 1:07 p.m., recessed at 2:55 p.m., reconvened at 3:15 p.m. and adjourned at 4:35 p.m.

Approved Minute No. 1
Sept. 25, 2007



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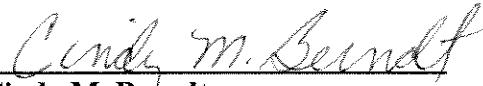
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 1 – Minutes

The Board approved the minutes from the meeting on March 8-9, 2007.


Cindy M. Berndt



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 2 – Exceptional State Waters-Hazel River

Alan Pollock, manager of the Office of Water Quality Programs, described previous staff appearances before the Board on this issue and summarized the public comments received on the Notice of Intended Regulatory Action to designate portions of the Hazel River as an Exceptional State Water.

Mr. Pollock then advised the Board of two issues raised during the comment period about the suitability of the Culpeper segment of the Hazel River for designation that had led staff to conclude that designation of the Culpeper county section should not move forward at this time.

The first issue is opposition from several riparian property owners with King's Grant rights who are very concerned that designating the Hazel River in Culpeper County would attract trespassers to their properties.

The second issue is that almost half of the Culpeper County segment is listed as impaired due to bacteria. Staff questions whether a water should be designated as a Exceptional State Water solely based upon recreational opportunities if it does not support the primary contact recreational use due to the bacteria impairment. The Department has submitted a TMDL report to the Environmental Protection Agency for the bacteria impairment and will work with other agencies and citizens to identify and implement the specific management actions needed to restore the waters so they support full recreational use. The majority of riparian property owners who indicated support for the designation are located along the river segment that is impaired. Mr. Pollock indicated it was staff's hope that these citizens, along with others in the watershed who supported the designation, would also support and participate in the clean up actions needed to restore the river.

Mr. Pollock advised the Board that based upon these issues and public comment staff had concluded the Exceptional State Waters rulemaking process should move forward only for the Hazel River segment located within the Shenandoah National Park. Since it was expected to be a non-controversial action, it could be handled through the Fast Track rulemaking process. The segment within Culpeper County could be reconsidered at a later time.

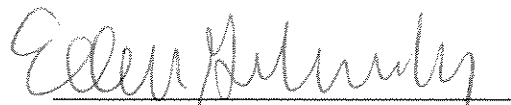
Board Decision:

Based on the briefing materials, the staff presentation, and Board discussion, the Board approved the following recommendations by unanimous vote:

1. Withdraw the NOIRA for the Hazel River that was published in the Virginia Register on February 19, 2007.
2. (a) That the Board authorize the Department to promulgate the proposed amendment to designate as Exceptional State Waters the Hazel River in Rappahannock County from its headwaters to the first downstream crossing with the Shenandoah National Park boundary and all tributaries within this segment within the confines of Shenandoah National Park for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

(b) That the Board authorize the Department to set an effective date effective upon filing notice of Environmental Protection Agency approval with the Registrar of Regulations after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

(c) Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.
3. Direct staff to reinitiate the designation process for the Culpeper County segment of the Hazel River after sufficient restoration work has progressed to reduce the bacteria contamination and to work with local citizens to address riparian landowner concerns.
4. Direct staff to investigate with the Attorney General's office the extent that King's Grant property rights impose restrictions on actions of the State Water Control Board and the public.



Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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MINUTE NO. 3 –Exceptional State Waters – North River and Stony Creek

Alan Pollock, manager of the Office of Water Quality Programs, updated the Board on staff efforts to identify waters with a special emphasis on the recreational activities of canoeing and kayaking for consideration as Exceptional State Water candidates. He described segments of two waters with exceptional canoeing and kayaking opportunities on United States Forest Service (USFS) property which the USFS indicated would be well suited for designation as Exceptional State Waters: North River in Augusta County and Little Stony Creek in Scott County.

Board Decision:

Based on the briefing materials and the staff presentation, the Board approved the following recommendations by unanimous vote:

1. Proceed with notification to the localities and riparian landowners who would be potentially impacted by Exceptional State Water designations for the North River in Augusta County and Little Stony Creek in Scott County and provide these potentially impacted parties a 60 day opportunity for comment.
2. Direct staff to appear before the Board at the next scheduled meeting after the close of the comment period to provide a summary of the comments and the results of the staff site visits so that the Board can at that time decide what course of action to take regarding initiating regulatory action for North River and Little Stony Creek.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 4 – Amendments to the Water Quality Standards (9 VAC 25-260) for Triennial Review

Staff from the Office of Water Quality Programs summarized the amendments and answered questions from the Board. Public comments were provided in the Board memo. The rulemaking contains many amendments and the more significant ones were described to the Board. These included a narrative criterion for swamp waters (Class VII waters), revised and new numerical criteria, two bacteria criteria options calculated using illness rates of 0.8% and 1.0% and several new special standards.

Decision:

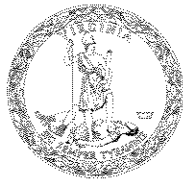
Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote:

Authorized the staff to proceed to public hearing with the proposed amendments to the Water Quality Standards 9 VAC 25-260 for triennial review.

A handwritten signature in cursive script that reads "Ellen Gilinsky".

Ellen Gilinsky, PhD.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON June 27, 2007

MINUTE NO. 5 - Proposed Regulations: Reissuance of the General VPDES Permit For Cooling Water Discharges (9 VAC 25-196)

The Board was provided a draft of the amended regulation and a summary memorandum prior to the meeting. Burt Tuxford gave a brief overview of the proposed regulation amendments.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize the staff to advertise a public comment period and hold a public hearing on the draft regulation amendment (9 VAC 25-196).

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director, Division of Water Quality Programs

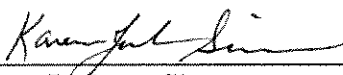
**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD
AT ITS MEETING ON June 27, 2007**

**MINUTE NO. 6 - Proposed Regulations: Reissuance of the General VPDES Permit For
Discharges from Petroleum Contaminated Sites, Ground Water
Remediation, and Hydrostatic Tests (9 VAC 25-120)**

The Board was provided a draft of the amended regulation and a summary memorandum prior to the meeting. John Giese gave a brief overview of the proposed regulation amendments.

Board Decision

Based on the briefing material and the staff presentation, the Board voted unanimously to authorize the staff to advertise a public comment period and hold a public hearing on the draft regulation amendment (9 VAC 25-120).



Karen Jackson Sismour
Director, Division of Waste



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MINUTE NO. 7 – Actions on TMDLs for Bull Run, Popes Head Creek and Guest River

Alan Pollock with the Office of Water Quality Programs presented the TMDL reports and amendments to the Water Quality Management Planning regulation for Bull Run [Loudoun, Fairfax and Prince William Counties, and the cities of Manassas and Manassas Park], Popes Head Creek [Fairfax County and the City of Fairfax], and Guest River [Wise County]. The amendments include new sediment wasteload allocations for Bull Run and Popes Head Creek and a minor modification to the sediment wasteload allocation for the Guest River. No public comment was received on the proposed amendments.

Decision:

Based upon the information provided to the Board and the staff recommendation, the Board by a unanimous vote:

1. Approve the portions of the TMDL reports presented in Tab F for Bull Run and Popes Head Creek as the plans to achieve the pollutant reductions necessary for the attainment of water quality standards, and authorize staff to update the appropriate Water Quality Management Plans accordingly; and,
2. Adopt the amendments to the Water Quality Management Planning Regulation 9 VAC 25-720, sections 50.A, and 90.A. as proposed in Attachment III of Tab F.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, PhD.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 8 – Shrine Mont STP – Shenandoah County

Keith Fowler, VRO Water Permits Manager, made the staff presentation regarding the proposed reissuance of VPDES Permit No. VA0028401, for the operation of the Shrine Mont STP facility. This matter was presented to the Board due to controversy surrounding the proposed permit action and the decision to hold a public hearing on May 3, 2007.

Mr. Fowler provided a brief background, then referred to the materials in the Board books for a detailed summary of the comments that were received prior to and during the public hearing, and through the close of the hearing record, as well as the staff's responses to those comments.

Following Mr. Fowler's presentation, Kevin Moomaw, the permittee, provided comments supporting the reissuance of the permit. Mr. Fowler and Amy Owens, VRO Regional Director, responded to questions raised by the Board.

Upon request from the Board, Mr. Fowler provided the staff recommendation that the Board authorize the reissuance of VPDES Permit No. VA0028401, as drafted.

Board Decision

By unanimous vote, the Board voted to authorize the reissuance of VPDES Permit No. VA0028401.

A handwritten signature in black ink, appearing to read "Amy Thatcher Owens", written over a horizontal line.

Amy Thatcher Owens
Regional Director
Valley Regional Office



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 9 – Coors Brewing Company - Shenandoah

Keith Fowler, VRO Water Permits Manager, made the staff presentation regarding the proposed reissuance of VPDES Permit No. VA0072345, for the operation of the Coors Brewing Company –Shenandoah facility. This matter was presented to the Board due to controversy surrounding the proposed permit action and the decision to hold a public hearing on May 17, 2007.

Mr. Fowler provided a brief background, then referred to the materials in the Board books for a detailed summary of the comments that were received prior to and during the public hearing, and through the close of the hearing record, as well as the staff's responses to those comments.

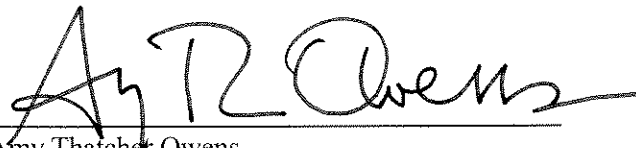
Following Mr. Fowler's presentation, Leon Szeptycki presented comments in opposition to the permit reissuance. Jeff Rinker, a representative of the permittee, then provided comments supporting the reissuance of the permit. Mr. Fowler, Mr. Rinker, and Amy Owens, VRO Regional Director, responded to questions raised by the Board.

Upon request from the Board, Mr. Fowler provided the staff recommendation that the Board authorize the reissuance of VPDES Permit No. VA0002178, as drafted.

This recommendation was moved and seconded. An amended motion was then moved and seconded to defer action on the permit. The amended motion failed on a 4-3 roll call vote.

Board Decision

By a vote of six to one, the Board voted to authorize the reissuance of VPDES Permit No. VA0073245, as drafted.



Amy Thatcher Owens
Regional Director
Valley Regional Office



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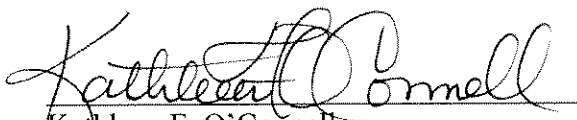
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MINUTE NO. 10 – Report on Facilities in Significant Noncompliance

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the Report on Facilities in Significant Noncompliance for the quarter ending December 31, 2006. The facilities, their owners, and the reported instances of noncompliance were:

1. Stafford County, Aquia Wastewater Treatment Facility – Failure to meet Ammonia Nitrogen, Total Phosphorus and Biochemical Oxygen Demand effluent limits. (Administrative order finalized, presented for approval at June Board meeting.)

The Board accepted the report.


Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 11 – Consent Special Orders

Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the following Consent Special Orders for approval:

- Hickory Green Dairy Farm, LLC
- Associated Naval Architects, Inc.
- Town of Monterey
- Fauquier County Water and Sanitation Authority
- Stafford County Aquia Advanced Wastewater Treatment Facility
- Town of Colonial Beach
- Iluka Resources, Inc.
- Town of Surry
- Kenan Transport
- Plantation Pipeline
- Sunoco, Inc.
- The Lester Group, Inc.
- Jim Matthews, Jr.
- Mendelson Development LLC

The Board unanimously approved the orders and further authorized the Department's Director, or his designee, to execute the orders on the Board's behalf and to refer violations of the orders to the Office of the Attorney General for appropriate legal action.

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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MINUTE NO. 12— Consent Special Order

After a brief discussion of public comment that had been made, Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the following Consent Special Order for approval:

Stanley Koogler

The Board unanimously approved the order and further authorized the Department's Director, or his designee, to execute the order on the Board's behalf and to refer violations of the order to the Office of the Attorney General for appropriate legal action.

A handwritten signature in cursive script that reads "Kathleen F. O'Connell".

Kathleen F. O'Connell

Water Enforcement Program Manager

Division of Enforcement



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MINUTE NO. 13— Consent Special Order

After a brief discussion of public comment that had been made, of the manner in which a penalty had been calculated, and of the compliance history of the regulated party, Kathleen O'Connell, Water Enforcement Program Manager, presented to the Board the following Consent Special Order for approval:

Omega Protein, Inc.

The Board rejected the proposed order on a vote of 5 to 2. In addition the Board requested that the staff reconsider the manner in which the order's proposed penalty was calculated, that staff renegotiate the penalty terms and that they then return to the Board with a proposed order that contained a more significant penalty.

A handwritten signature in cursive script that reads "Kathleen F. O'Connell".

Kathleen F. O'Connell
Water Enforcement Program Manager
Division of Enforcement



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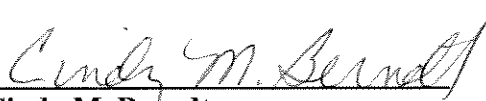
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MINUTE NO. 14 – Public Forum

Ms. Terri Cofer Beirne appeared to express concern that a consent special order had been agreed to for the Plantation Pipeline Company. She informed the Board that the adjacent landowners were not given written notice of the proposed settlement and that settlement was premature. The Board advised Ms. Beirne to meet with Department staff.

Mr. Mike Gerel from the Chesapeake Bay Foundation appeared to discuss three areas of the proposed amendments to the Water Quality Standards. Mr. Gerel advised the Board that the Foundation objected to the relaxation of the bacteria standards, opposed the new mixing zones for mercury and PCBs and asked that the standards include a requirement that the antidegradation policy be implemented on a pollutant to pollutant basis.


Cindy M. Berndt



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MINUTE NO. 15 – Division Director Report

Ellen Gilinsky, Water Quality Division Director, reported to the Board on the updated State Programmatic General Permit (SPGP) recently revised by the Norfolk District Army Corps of Engineers and the status of the Biosolids Program incorporation from VDH to DEQ.

Changes to the SPGP, which affect how permits are issued within the Virginia Water Protection Permit (VWP) Program, eliminate duplicative reviews by having DEQ do initial coordination with any agencies, such that the Corps is involved only when required for federal issues related to historic resources and endangered species. The SPGP covers over 80% of the development and transportation projects requiring VWP permits. In addition, the changes include a dispute resolution process adopted for disagreements between Corps and DEQ. Other VWP program improvements include: Improvement to Permit Processing Times; MOU with DGIF and DCR on Threatened and Endangered Species Reviews; Centralized Permit Team Leader to ensure consistent application of regulations and guidance; Revamping permit manual, including improved availability to public and consultant seminars; Increased Staffing with new FTEs for Historic Resources, Program Coordination & Guidance, Enforcement, and Permit Reviews. Dr. Gilinsky also discussed the wetlands monitoring and assessment program and development and implementation of an enhanced compliance and enforcement program.

DEQ has formed a new Office of Land Application with the Water Quality Division, with Neil Zahradka as its manager. This office will oversee the Biosolids and CAFO programs. An internal workgroup has been formed to determine regional staffing and program implementation. Up to 20 new FTEs have been approved to staff the program, with a focus on regional permitting and compliance staff as well as education and outreach. The program transfers on January 1, 2008. We will be coming to the Board with a "Final Exempt" action at the September meeting, which will incorporate legislative mandates, transfer Biosolids Use Regulations to SWCB & DEQ, and include them in the VPA Regulation (9VAC25-32). Further Improvement through APA Process will follow that with a NOIRA to open VPA and VPDES regs to streamline land application requirements and make Biosolids program enhancements.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Director
Division of Water Quality Programs



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MINUTE NO. 16 – Fish Kill Report

Ellen Gilinsky and Don Kain summarized the progression of the Fish Kills in the Shenandoah Rivers and now the upper James River and discussed the plan for further study to determine causes. They summarized the findings of the Fish Kill "Science Team" comprised of Regional Fisheries Experts Dr. Greg Garman – VCU and Dr. Don Orth – VA Tech. This group was charged to Review all work to date; Develop report/recommendations; Refocus efforts as appropriate. High priority theories identified from existing information include: Cumulative (temporal and/or trophic) effects of primarily agricultural chemicals and additives, including biocides, trace metals, hormones, and drugs; Immunosuppression in affected fishes, leading to infection by secondary opportunistic biological pathogen(s); Direct effects by unknown biological pathogen(s), including bacteria, protist or mesomycetozoan parasites, viruses, or fungi. Recommendations for further study include: Expand scope of fish pathology studies, including completing analysis on 2004-2007 fish samples; Correlate James River vs Shenandoah fish kill events with regard to pathology evidence and geospatial patterns; Evaluate all waste streams for toxicants and additives, including poultry litter and manure; Develop a contaminant profile of selected characteristics of suspected chemical compounds or agents; Expand Science Team.

DEQ along with DGIF is establishing a Fish Kill Research Advisory Committee to be a standing advisory committee of technical experts to work with the agencies on systematically evaluating causes and cures for the current fish kills we are experiencing in the James and Shenandoah basins. The Task Force will continue as a public outreach and advisory body.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.

Director

Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 17 – Seaside Heritage Program and Shellfish Aquaculture Enhancement Zones

Laura McKay, with the Virginia Coastal Zone Management Program, described the *Seaside Heritage Program*. This \$3 million investment in Virginia CZM funds from NOAA has been used since 2002 to restore coastal resources on the seaside of Virginia's Eastern Shore. Efforts have focused on eelgrass and oyster reef restoration, Phragmites control, mammalian predator control, ecotourism improvements, shellfish aquaculture Best Management Practices and research on impacts of shellfish cultivation. Research to date on impacts of clam aquaculture has shown positive impacts in that clam netting creates a substrate for growth of organisms that are food for shorebirds and juvenile fish.

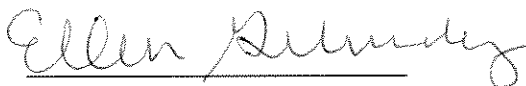
The Seaside Heritage Program is now moving into a management plan phase that will undoubtedly strive to both protect coastal resources and ensure the growth of sustainable industries such as shellfish farming and ecotourism that depend on high water quality. The Seaside Management Plan is being developed in collaboration with all of the major stakeholders: federal and state agencies, local governments, private non-profits and ecotourism and aquaculture industry representatives. The management plan effort and development of new enforceable policies will be funded at a level of about \$75,000 per year from 2007 through 2011.

Alan Pollock, with the Office of Water Quality Programs, explained DEQ's plans to initiate a regulatory action to enhance protection of the Eastern Shore's high quality waters which are especially well-suited for shellfish aquaculture operations. Mr. Pollock explained that staff currently envisions the rulemaking would amend the Virginia Water Quality Standards to include a new designation of "Shellfish Aquaculture Enhancement Zones" for the Eastern Shore of Virginia.

For waters so designated, a narrative criterion would provide additional protection to these waters by requiring applicants for point source dischargers to demonstrate that

practicable alternatives to discharging pollutants to the listed waters have been evaluated and that the proposed discharge is the alternative that produces the least environmental impact. Under this approach, the board could disapprove the proposal if a practicable alternative is available that produces less environmental impact.

Mr. Pollock indicated staff plans to initiate the rulemaking process in the near future by soliciting public comment on the proposal and any other approaches that would achieve the water quality objectives. The agency plans to use the participatory approach in developing a final proposal and expects to return to the Board in the summer of 2008 asking for authorization to proceed to public comment and hearing on the final proposal.

A handwritten signature in cursive script, reading "Ellen Gilinsky", written in dark ink. The signature is fluid and extends across the width of the text block.

Ellen Gilinsky, PhD.

Director, Division of Water Quality Programs



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 18 – Informational Session, Mitigation Sequencing

Dave Davis, Director of the Office of Wetlands & Water Protection, presented an informational session to the Board on Mitigation Sequencing. General topics of the presentation and subsequent discussions included avoidance and minimization review procedures, investment-backed expectations, and on-site compensation versus mitigation banking.

Decision:

The Board requested that a map be included in their review package when a permit approval recommendation includes compensation at an approved mitigation bank; the map should depict the location of the wetland impact and the location of the mitigation bank. The Board also requested that there be more detailed information provided in the fact sheets on the avoidance and minimization efforts that have occurred during the permit application review.

A handwritten signature in cursive script, reading "Ellen Gilinsky".

Ellen Gilinsky, PhD.

Director, Division of Water Quality Programs



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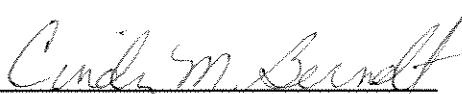
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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON JUNE 27, 2007

MINUTE NO. 19 – Future Meetings

The Board confirmed the Special Board Meeting date of July 30, 2007, and Regular Board Meeting dates of September 25-26, 2007, and December 4-5, 2007.


Cindy M. Berndt